

Message Text

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ORIGIN L-03

INFO OCT-01 ARA-06 ISO-00 SSO-00 NSCE-00 INRE-00 SP-02

USIA-06 AID-05 EB-07 NSC-05 CIEP-01 TRSE-00 SS-15

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PRS-01 INR-07 /071 R

DRAFTED BY L/ARA:DAGANTZ

APPROVED BY T:CEMAW

S/P:LEINAUDI

L/T:AROVINE (DRAFT)

L:MLEIGH (DRAFT)

ARA/EP:RFWEBER (DRAFT)

TREASURY:RGOODMAN

S/S:FORTIZ

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FM SECSTATE WASHDC

TO AMEMBASSY LIMA IMMEDIATE

C O N F I D E N T I A L STATE 091370

E.O. 11652: GDS

TAGS: EIND, EINV, EMIN, PFOR, PE

SUBJECT: MARCONA - DRAFT AGREEMENT

1. DEPT'S DRAFT OF INTERGOVERNMENTAL AGREEMENT ON
SETTLEMENT OF MARCONA EXPROPRIATION GIVEN BELOW. PLEASE
PROVIDE AMBASSADOR DE LA PUENTE WITH THE TEXT ASAP.

QUOTE

MEMORANDUM OF AGREEMENT

THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF
PERU, DESIROUS OF ARRIVING AT A FULL, FINAL AND JUST
SETTLEMENT OF THE EXPROPRIATION OF THE MARCONA MINING
COMPANY, WHOSE MINING-METALLURGICAL COMPLEX IN PERU WAS
NATIONALIZED IN ACCORDANCE WITH THE PROVISIONS OF
DECREE LAW 21228 OF THE GOVERNMENT OF PERU, HAVE DECIDED
TO CONCLUDE THE FOLLOWING AGREEMENT:

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1(A). IN VIEW OF THE CLAIMS OF THE GOVERNMENT OF PERU

AGAINST THE MARCONA MINING COMPANY ARISING FROM THE OPERATIONS OF THE MARCONA MINING COMPANY IN PERU, AND OF THE CLAIMS OF THE MARCONA MINING COMPANY AGAINST THE GOVERNMENT OF PERU ARISING FROM THE NATIONALIZATION BY THE GOVERNMENT OF PERU OF MARCONA'S MINING-METALLURGICAL COMPLEX IN PERU IN ACCORDANCE WITH THE PROVISIONS OF DECREE LAW 21228 OF THE GOVERNMENT OF PERU, THE GOVERNMENT OF PERU AGREES TO PAY TO THE MARCONA MINING COMPANY, ON THE DATE OF SIGNATURE OF THIS AGREEMENT, THE SUM OF \$33 MILLION US DOLLARS.

(B) THE GOVERNMENT OF PERU, THROUGH MINEROPERU COMMERCIAL (MINPECO) SHALL CONTRACT WITH THE MARCONA INC. OR ITS DULY DESIGNATED AGENT OR SUCCESSOR FOR THE SALE OF 1.1 MILLION TONS OF IRON OXIDE PELLETS (65 FE) AT A BASE PRICE OF \$18 PER DRY LONG TON, FOR DELIVERY IN ACCORDANCE WITH THE TERMS OF THE CONTRACT. THE GOVERNMENT OF PERU, THROUGH MINPECO, SHALL FURTHER CONTRACT WITH MARCONA, INC. FOR THE SALE, AT THE LATTER'S OPTION, OF UP TO AN ADDITIONAL TWO MILLION TONS OF IRON OXIDE PELLETS (65 FE), AT A BASE PRICE OF \$20 PER DRY LONG TON, FOR DELIVERY IN ACCORDANCE WITH THE TERMS OF THE CONTRACT.

(C) THE GOVERNMENT OF PERU, THROUGH COMPANIA PERUANA DE VAPORES, SHALL CONTRACT WITH MARCONA, INC., TO EXTEND TO MARCH 31, 1978, THE CONTRACT OF AFFREIGHTMENT DATED DEC. 11, 1975, TO PROVIDE FOR THE TRANSPORTATION OF APPROXIMATELY (BLANK) MILLION TONS OF IRON ORE PRODUCTS AT THE RATES SET FORTH IN ANNEX A. THE IRON ORE PRODUCTS SPECIFIED IN SUBPARAGRAPH B ABOVE SHALL NOT BE COVERED BY THIS TRANSPORTATION AGREEMENT.

2. THE GOVERNMENT OF THE UNITED STATES DECLARES THAT THE PAYMENT BY THE GOVERNMENT OF PERU TO THE MARCONA MINING COMPANY OF THE SUM SPECIFIED IN PARAGRAPH 1, AND THE PERFORMANCE BY PERU OF THE CONTRACTUAL OBLIGATIONS IT ASSUMES PURSUANT TO THE OTHER PROVISIONS OF PARAGRAPH 1, WILL TERMINATE ALL LIABILITIES OR OBLIGATIONS OF THE GOVERNMENT OF PERU TO THE MARCONA CORPORATION, ITS SUBSIDIARIES, BRANCHES, OR AFFILIATES, ARISING OUT OF THE NATIONALIZATION BY PERU OF THE PERUVIAN BRANCH OF MARCONA MINING COMPANY IN ACCORDANCE WITH PROVISIONS OF DECREE LAW 21228 OF THE GOVERNMENT OF PERU.

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3. IN VIEW OF THE INTERGOVERNMENTAL NATURE OF THIS AGREEMENT, THE GOVERNMENT OF PERU DECLARES THAT THERE NO LONGER EXIST ANY LIABILITIES FOR THE PAYMENT OF TAXES, OR OTHER CHARGES OR OBLIGATIONS, OR LEGAL ACTIONS, CIVIL OR CRIMINAL, AGAINST THE MARCONA CORPORATION OR ITS SUBSIDIARIES, BRANCHES OR AFFILIATES, INCLUDING THE MARCONA MINING COMPANY, OR AGAINST THE PRESENT OR FORMER OFFICIALS OF ANY OF THEM, REGARDING THEIR ACTIVITIES AS EMPLOYEES OF

MARCONA CORPORATION, ITS SUBSIDIARIES, BRANCHES, OR AFFILIATES, PRIOR TO THE CONCLUSION OF THE AGREEMENT. NOR WILL ANY CLAIMS OR PROCEEDINGS BASED ON SUCH TAXES, CHARGES, OBLIGATIONS, OR LEGAL ACTIONS AFFECTING THE NATURAL OR JURIDICAL PERSONS REFERRED TO ABOVE BE ASSERTED, CONTINUED OR ENFORCED IN THE FUTURE.

4. AFTER THE ENTRY INTO FORCE OF THIS AGREEMENT, NEITHER GOVERNMENT WILL PRESENT TO THE OTHER, ON ITS BEHALF OR ON BEHALF OF ANOTHER, ANY CLAIM OR DEMAND ARISING OUT OF THE NATIONALIZATION BY THE GOVERNMENT OF PERU OF MARCONA MINING COMPANY'S MINING-METALLURGICAL COMPLEX IN PERU OR OF THE OPERATIONS OF THE MARCONA MINING COMPANY IN PERU. IN THE EVENT THAT SUCH CLAIMS ARE PRESENTED DIRECTLY BY NATIONALS OF ONE COUNTRY TO THE GOVERNMENT OF THE OTHER, SUCH GOVERNMENT WILL REFER THEM TO THE GOVERNMENT OF THE NATIONAL CONCERNED.

5. THE GOVERNMENT OF PERU AFFIRMS THAT IN ACCORDANCE WITH ARTICLE 12 OF DECREE LAW 21228 HIERRO-PERU HAS ASSUMED, BY SUBROGATION, THE OUTSTANDING OBLIGATIONS OF THE PERUVIAN BRANCH OF THE MARCONA MINING COMPANY TO SUPPLIERS AND LENDING INSTITUTIONS, AS WELL AS THE SALARIES AND SOCIAL BENEFITS OF ITS EMPLOYEES.

6. THIS AGREEMENT SHALL ENTER INTO FORCE UPON SIGNATURE. DONE AT LIMA THIS (BLANK) DAY OF APRIL 1976, IN THE SPANISH AND ENGLISH LANGUAGES, BOTH TEXTS BEING EQUALLY AUTHENTIC.

(SIGNATURE) (SIGNATURE)

FOR THE UNITED STATES FOR PERU

END QUOTE

2. IT OCCURS TO US THAT GARCIA BEDOYA'S PRESENCE IN LIMA NEXT WEEK COULD BE HELPFUL, GIVEN HIS PARTICIPATION TO DATE AND HIS PREVIOUS EXPERIENCE AS THE CHIEF PERUVIAN NEGOTIATOR OF THE TEXT OF THE GREENE AGREEMENT. SUGGEST CONFIDENTIAL

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YOU MENTION THIS POSSIBILITY TO DE LA PUENTE. KISSINGER

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NNN

Message Attributes

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